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GOVERNMENT OF MYSORE.

**FOOD, CIVIL SUPPLIES AND LABOUR AND MUNICIPAL ADMINISTRATION
DEPARTMENT. (LABOUR).**

Labour Dispute —Industrial Dispute between the Workmen and the Management of Bharath Electronics Ltd., Bangalore.

Award of the Additional Industrial Tribunal, Bangalore Published.
Read the following papers :—

(1) Letter No. A.I.T.No. 403-4/67-68, dated 5th August 1967 from Shri V. C. Ramachandran, Presiding Officer, Industrial Tribunal, Bangalore.

**BEFORE THE INDUSTRIAL TRIBUNAL IN MYSORE,
BANGALORE.**

Dated 3rd August 1967.

Present :

Shri V. C. Ramachandran, B.A., B.Sc. (Lond),
A. R. C. S., Bar-at-Law.

Presiding Officer

A. I. T. No. 13 of 1966

I Party.

II Party

The Workmen of Bharat Electronics Ltd., by

The Management of Bharat Electronics Ltd., Jalahalli
Vs P. O. Bangalore.

(a) The Secretary, Bharat Electronics Karmika Sangha, Gokula Building, Jalahalli Post, Bangalore-31

(b) The Secretary, Bharat Electronics Employees' Union BEL Estate, Jalahalli P. O., Bangalore.

Appearances :

I Party :—Sri M. C. Narasimhan

II Party :—Sri B. T. Parthasarathy, Advocate, Bangalore

Reference.

(G. O. No. LMA 143 LLD 65, dated 14th April 1966).

INTERIM AWARD.

By Government Order No. LMA 143 LLD 65 dated 14th April 1966 the Government of Mysore have referred an Industrial Dispute between the workmen and the management of Bharat Electronics Ltd. for adjudication under Section 10 (1) (d) of the Industrial Disputes Act, 1947. The points of Dispute referred for adjudication are :

- (1) Are the Workmen of the Bharat Electronics Ltd., justified in claiming that the D. A. should be linked with the Consumer Price Index for Bangalore City, and
- (2) Are the workmen of Bharat Electronics Ltd., Bangalore, justified in demanding Profit Sharing Bonus for the years 1962-63 and 1963-64.

The Reference is transferred to this Tribunal by Government in their Order No. LMA 595 LLD 66 dated 29th November 1966. It may not be necessary at this stage to refer to the claim statement or the rejoinder and I shall confine only to the application for grant of Interim Relief filed by 1(b) Union. They state that the cost of living Index at Bangalore has increased substantially since the last revision in the rates of Dearness Allowance which had come into effect from 1st December 1965. The cost of living Index in November 1965 was 688.42 and that of November 1966 was 719.57. The Management was giving Dearness Allowance at the same rate as applicable to the Central Government Servants till the Central Government implemented the recommendations of the Gajendragadkar's Commission. The Management also did not implement the Interim Relief recommended by the Engineering Wage Board. It is, therefore, prayed that an Interim Relief be granted and an Interim Award be passed directing the Management to enhance the Dearness allowance to the workmen on par with the State and Central Government employees.

2. The claim for Interim Relief was resisted by the Management on various grounds. They state that in view of the Settlement dated 13th October 1965, the Reference itself with regard to Dearness Allowance is irregular, illegal and without jurisdiction.

There is no condition of service as alleged by the Employees Union that the workmen are entitled to the same rate of Dearness Allowance as applicable to the Central Government employees. They further state that the question of implementation of the Wage Board Recommendations on payment of Interim Relief as accepted by the Government of India is under active discussion and is under negotiations. The Management submits that there is no wanton delay in implementing the decision of the Government of India and recommendation with regard to the Interim Relief made by the Wage Board for Engineering Industries. They further submit that the claim for the Interim Relief, viz., to enhance the Dearness Allowance on par with the State and Central Government rates is not justifiable.

3. So far as the main objection is concerned that this Tribunal has no jurisdiction to pass an Award on Interim Relief, this Tribunal has already passed an Order dated 17th March 1967. In that Order it is held that the Settlement which is effected between the workers and the management does not bar the claim for Interim Relief and that on the contrary, the Interim Relief under the settlement has to be settled when the Wage Board recommendations on Interim Relief became known and that as the recommendations of the Wage Board with regard to Interim Relief has been published, the question of Interim Relief has to be settled and that this Tribunal has jurisdiction to settle the Interim Relief and now the quantum of relief that the I party Members are entitled to has to be decided.

4. It is not seriously disputed by the Management that the revision of the Dearness Allowance payable to the workmen of the I Party are liable to be made. It is common ground between the Parties that the cost of living has risen up from December 1965, when the last revision was made to the present date. It has been the practice of the Management to revise the Dearness Allowance from time to time in order to neutralise the rise in the Cost of Living. The Formula followed by the Management ever since 1961 was to adopt the revision of Dearness Allowance which the Central Government made for its employees. That practice, no doubt, has not become a condition of service but at the same time, it must be admitted that the Management is liable to revise the Dearness Allowance as and when there is a rise in the cost of living. As a matter of fact, the Management has admitted that they are contemplating a revision

to the Dearness Allowance and for that purpose, there have been negotiations with the employees Union to arrive at an amicable settlement. No such amicable settlement has so far been unfortunately reached although there have been offer and counter offer, but fortunately during the proceedings before this Tribunal the offer made by the Management had been accepted by the Employees' Union and the only difference between the Parties is whether the conditions attached to the offer made by the Management should remain or whether the Management's offer should be unconditional as contended by the Employees' Union.

5. The learned Counsel for the Management argued firstly that the entire claim for Dearness Allowance is not based upon any legal obligations or rights and that it is purely *exgratia* or gratuitous payment on the part of the Management and there can be no adjudication on this question. In support of that contention, he relied upon the decision reported in AIR 1954 SC 493—the State of Madhya Pradesh Vs. G. C. Mandawar in which the following observations are made:—

“Under this provision, it is a matter of discretion with the local Government whether it will grant dearness allowance and if so, how much. That being so, the prayer for '*mandamus*' is clearly misconceived, as that could be granted only when there is in the applicant a right to compel the performance of some duty cost on the opponent. Rule 44 of the Fundamental Rules confers no right on the Government servants to the grant of dearness allowance; it imposes no duty on the State to grant it. It merely confers a power on the State to grant compassionate allowance at its own discretion, and no *mandamus* can issue to compel the exercise of such a power.”

That decision could have no bearing to the instant case. That decision is based on the fundamental rules which are applicable only to the Government Servants and not to the workmen in an industry. There is no rule shown to me under which the Management has a discretion to pay or not to pay the Dearness Allowance. It was urged that there was no contract to pay dearness allowance and when there is no legal right under law, it is not capable of enforcement. In my view, the Civil law relating to contracts, legal rights arising

out of the contracts, etc., are not binding on Industrial Tribunals. The Industrial Tribunal has to adjudicate the disputes before it not on civil law or Legal rights but purely on ethical principles in order to promote social justice which is one of the aims of our Constitution *viz.*, to bring about justice politically, economically and socially. This Tribunal is not fettered by the limitations of contract. If the arguments of the learned Counsel were to prevail, then the wage structure once fixed between the Management and the workmen, can never be changed as any change would be opposed to contractual obligations between the Parties. The objection of the learned Counsel for the management in my view has absolutely no force.

6. The offer made by the management is contained in Ext. M.7 under which the Management undertook to pay from 1st April 1966 additional *Ad hoc* rates of allowances to the employees in the pay scale upto and inclusive of Group IX at the following rates:—

The employees drawing basic pay/wages		
From	Rs. 70-109	Rs. 9.00 per month.
	„ 110-149	„ 7.50 „
	„ 150-209	„ 6.00 „
	„ 210-440	„ 6.00 „

That offer has been accepted by the I (b) Party subject to the following modifications :

- (1) The Interim Relief should be treated as Dearness Allowance ;
- (2) The conditions attached to the offer that the Parties must agree not to press the issue of D. A. before the Tribunal and others must be dropped.

7. The learned Counsel for the Management further contended that when the offer has not been accepted in toto, the offer is no longer alive and it should be taken as withdrawn. It cannot, however, be denied that revision of Dearness Allowance is indicated under the following circumstances.—

1. When there is a rise in the cost of living ;
2. When that rise in the cost of living has to be neutralised;

When the comparable industry in the region has revised the Dearness Allowance; and

4. When the industry is in a financial position to meet the additional burden.

In my view all these conditions prevail and there can be no doubt that the revision of Dearness Allowance is indicated. The Management do recognise the necessity for revision of Dearness Allowance and have in fact made an offer. Indeed they had already implemented the revision of Dearness Allowance so far as certain other employees are concerned as under Exr. M. 16, they had granted an *ad hoc* allowance to executive staff from 1st August 1966 at the rate of Rs. 15 per month for those drawing between Rs. 350 and Rs. 399 basic pay. In those circumstances and especially in view of the fact that an Interim Relief has been recommended by the Engineering Wage Board to which both the workmen as well as the Management have hitched their wagons a revision of Dearness Allowance is called for. The offer made by the Management shows that it has financial capacity to bear the additional burden.

8. The only controversy is whether the two conditions attached to the offer, viz., that the Interim Relief should not be treated as Dearness Allowance and that the entire reference should be withdrawn by the Union are justifiable and valid. So far as the first condition is concerned, this Tribunal cannot in the interim award give a relief which is different in character from the final award that it can pass. It must be remembered that the Reference itself is for linking the Dearness Allowance with the cost of Living Index and this Tribunal is not called upon to decide any question relating to basic pay or any other allowance and the terms of Reference confines only to the question of Dearness Allowance. -1, therefore, cannot pass an Interim Award except with regard to the Dearness Allowance and hence the condition imposed by the Management has no force. I would, in this connection, refer to the decision in 1953 I LLJ 208 in which it has been held that the interim relief, as the term indicates, is in aid of the final relief that may ultimately be granted and the power to grant such relief is inherent in the power to grant final relief; but no interim relief could be given larger than the final relief or beyond what is referred by Government. In view of the decision cited, it is not open to me to give an interim relief beyond the relief that could be granted in

the final Award. The only relief that I can grant is in respect of the Dearness Allowance in the final award and the Interim relief would only be towards Dearness Allowance. I cannot make it as an *ad-hoc* allowance.

9. The reference has to be decided on merits and I express no opinion about it. At present the management is not justified also in asking the Union to have the Reference withdrawn. In order to secure industrial peace and to avoid unrest, a final determination of the dispute with regard to the Dearness Allowance which has been hanging fire for a number of years is essential and to dispose of the reference without coming to a final decision will only postpone the inevitable conflict between the parties. To set at rest this controversy it is desirable that the matter be adjudicated and the management calling the Union not to press the Reference seems to be against the interest of securing industrial peace and that condition also cannot be insisted upon. In the result, I make the following Interim Award.—

INTERIM AWARD

All the workmen of the I Party except those who are covered by Ext. M. 15 are entitled to additional Dearness Allowance with effect from 1st April 1966 in the Pay Scale up to and inclusive of group IX at the following rates.—

From Rs.	Rs. per month
70 to 109	8
110 to 149	7-50
150 to 209	6-00
210 to 440	6-00

Subject to the following conditions :

(a) This Dearness Allowance will not count for any purpose such as Provident Fund, Over-time, Incentive Payments, Gratuity Bonus and other allowances.

(b) This Dearness Allowance is adjustable against the final award to be passed in this Reference, and becomes payable one month after the publication in the Gazette.

Each party will bear its own costs.

V. C. RAMACHANDRAN,
Presiding Officer.
Additional Industrial Tribunal,
Bangalore.

ORDER.

Bangalore, dated the 2nd September 1967.

S. O 1710 --WHEREAS by State Government Order No. LMA 143 LLD 65, dated 14th April 1966, the Industrial Dispute between the Workmen and the Management of Bharath Electronics Ltd., Bangalore, was referred to the Industrial Tribunal, Bangalore, for adjudication.

THE REFERENCE is transferred to the Tribunal by G. O. No LMA 595 LLE 66 dated 29th November 1966. And whereas the Additional Industrial Tribunal, Bangalore, has submitted to the State Government, its Interim award in respect of the said Industrial Dispute ;

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said award as above, in the *Mysore Gazette*.

[No. LMA 143 LLD 65.]

By Order and in the name of the Governor of Mysore,

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G. G. PUROHIT, *Under Secy.*